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3 UNITED STATES DISTRICT COURT
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6 DISTRICT OF NEVADA
78 LAUSTEVEION JOHNSON,
9v.
10 Plaintiff,

Case No. 3:22-cv-00090-ART-CSD

11 LAURIE HOOVER, *et al.*,12 Defendants.
1314 ORDER
15

16 *Pro se* Plaintiff Lausteveion Johnson filed an application to proceed in *forma*
17 *pauperis* and submitted a civil-rights complaint under 42 U.S.C. § 1983. (ECF
18 Nos. 1, 1-1). On July 7, 2022, the Court screened the complaint, permitting one
19 claim to proceed and dismissing the remaining claim with leave to amend. (ECF
20 No. 6 at 9-10). Plaintiff chose not to amend his complaint. The Court
21 subsequently granted Plaintiff's application to proceed *in forma pauperis*,
22 excluded the case from the Inmate Early Mediation Program, and indicated that
23 this action would "proceed on the normal litigation track." (ECF Nos. 8, 9, 10).
24 Following acceptance of service, the sole remaining defendant, Jennifer Nash,
25 moved to dismiss the complaint on the grounds that it is "maliciously duplicative"
26 of a complaint in a previously filed case. (ECF No. 14).
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28 Instead of responding to the motion to dismiss, Plaintiff filed a notice of
voluntary dismissal of this action. (ECF No. 16). Under Federal Rule of Civil
Procedure 41(a)(1), a plaintiff may dismiss an action without a court order by
filing "a notice of dismissal before the opposing party serves either an answer or
a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). "[A] dismissal
under Rule 41(a)(1) is effective on filing, no court order is required, the parties
are left as though no action had been brought, the defendant can't complain, and
the district court lacks jurisdiction to do anything about it." *Commercial Space*

1 *Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193 F.3d 1074, 1078 (9th Cir. 1999). Moreover,
2 “[e]ven if the defendant has filed a motion to dismiss, the plaintiff may terminate
3 his action voluntarily by filing a notice of dismissal under Rule 41(a)(1).” *Concha*
4 *v. London*, 62 F.3d 1493, 1506 (9th Cir. 1995); *see also Kun Yuan Asset Mgmt.*
5 *Co. Ltd. v. Su*, No. 21-cv-06236-BLF, 2022 WL 206794, at *1 (N.D. Cal. Jan. 24,
6 2022) (“While Defendant has filed a motion to dismiss, this does not constitute
7 an ‘answer or a motion for summary judgment’ under Rule 41(a)(1)(A)(i).”). Thus,
8 because no answer or motion for summary judgment has been filed, the Court
9 dismisses this action without prejudice.

10 It is therefore ordered that this action is dismissed in its entirety without
11 prejudice.

12 It is further ordered that Defendant Jennifer Nash’s motion to dismiss (ECF
13 No. 14) is denied as moot.

14 It is further ordered that the Clerk of the Court will close this case.

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16 DATED THIS 16th day of November 2022.

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21 ANNE R. TRAUM
22 UNITED STATES DISTRICT JUDGE

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